

Submitted to:
Waste Management Council
Attn.: Appeals Clerk, NH DES Legal Unit
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

Submitted by:
D. Rae Barnhisel, Ph.D.
161 Fish Road
Temple, NH 03084

Regarding:
Docket No. 05-20 WMC

Dated:
March 7, 2006

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MOTION TO DENY REQUEST FOR CONTINUANCE

Per Env-WMC 204.13 and 204.15, this Motion is to Deny Request for Continuance of the March 16, 2006, hearing of the above-captioned case, by the Applicant, Town of Temple, based on the following facts:


- 1) The Town of Temple is an optional third party in this Appeal, is not required to intervene or participate, and so should be limited in its ability to provide grounds for a continuance.
- 2) The Town of Temple is retaining optional secondary legal representation in order to intervene in this Appeal. The Town of Temple Town Counsel, William R. Drescher, Esq., has been legal counsel to the Applicant for all proceedings leading up to this Appeal (dating back to the year 2000). Mr. Drescher is fully informed of this case and should be able to adequately represent the Town of Temple, unless he has abandoned his client.
- 3) The Town of Temple is tactically delaying the date of the hearing. The Town of Temple rushed to meet the requirements of the Permit under Appeal, yet waited to retain this optional secondary legal representation. This is supported by official Town of Temple Select Board minutes dated the following:
 - a. On November 22, 2005, the Town of Temple acknowledged the receipt of the Appellant's November 18, 2005, Letter of Appeal of the Permit issued on November 7, 2005 by the Defendant, and immediately authorized the hiring of an engineer to perform work required by the Permit.
 - b. On December 13, 2005, the Town of Temple acknowledged that a significant portion of the work required by the Permit had been completed, and that the Permit had been filed with the Hillsborough County Registry of Deeds.
 - c. On December 27, 2005, the Town of Temple acknowledged the receipt of the Appellant's December 21, 2005, Notice of Appeal of the Permit in question.
 - d. On January 24, 2006, the Town of Temple acknowledged that further conditions of the Permit had been completed and authorized the documentation to be forwarded to the Hillsborough County Registry of Deeds and NH DES.
 - e. On February 16, 2006, the Council informs the Town of Temple and all other parties of this Appeal that a hearing has been scheduled for March 16, 2006.
 - f. On February 28, 2006, the Town of Temple hires optional, secondary, legal representation in order to intervene in this Appeal.

- 4) The Town of Temple has not acted in good faith to ensure the *status quo* and thus may have used public funds to put public health at risk. To grant a continuance to such an unreasonable party allows further opportunity for actions to occur that are not in the public interest and that prejudice the Appellant's case for relief.
- 5) The issues raised in this Appeal are for the Defendant to address. Any submission by the Applicant will have no bearing on the case. To grant a continuance to the Applicant, an irrelevant party, is not in the public interest and prejudices the Appellant's case for relief.
- 6) The Appeal before the Council consists of three (3) pages of argument that either do, or do not, present a case in which the Defendant acted arbitrarily and capriciously when it granted the Permit in question. To continue the hearing of a brief, straightforward appeal at the request of an optional, unreasonable, and irrelevant third party is not in the public interest and prejudices the Appellant's case for relief.
- 7) The Town of Temple's objection that the Appeal Hearing date was scheduled in close proximity to Town of Temple elections has no merit. The Town Counsel has had four (4) months to prepare for the three (3) page Appeal and is neither professionally nor personally involved in the municipal election. The change of a single Select Board member as a result of the elections should have no bearing on the Town Counsel's ability to prepare for or litigate this case.
- 8) Concurrence from other parties is not required given that the Defendant assented to the Motion to Continue submitted by the Applicant.
- 9) Progress towards a settlement has not been demonstrated by the parties.

Therefore, I, as the Appellant, respectfully request that this Council grant the following:

- a. Deny the Applicant's Motion to Continue the hearing of the Appeal timely and appropriately scheduled for March 16, 2006.
- b. Issue an Order that the Applicant refrain from action that seeks to comply with the Permit in question until the Appeal is heard;
- c. Provide all other appropriate relief.

Signed this 7th Day of March, 2006

 **COPY**

D. R. Barnhisel, Ph.D.
161 Fish Road
Temple, NH 03084

Certificate of Service

On this 7th day of March 2006, I hereby certify that I have:

- 1) Mailed, by first class prepaid postage, an original and twenty (20) copies of this Motion to Deny Request for Continuance to:

Waste Management Council
Attn.: Appeals Clerk, Michael P. Sclafani
DES Legal Unit
29 Hazen Drive, P.O. Box 95
Concord, NH 03362-0095

- 2) Mailed, by first class prepaid postage, one (1) copy of this Motion to Deny Request for Continuance to:

- a. Anthony Blenkinsop, Esq.
Asst. Atty. Gen., Office of Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, NH 03301
- b. William R. Drescher, Esq.
Drescher & Dokmo, P.A.
21 Emerson Road; P.O. Box 7483
Milford, NH 03055-7483
- c. Biron Bedard, Esq.
Cook & Moylan, P.A.
100 Hall Street; P.O. Box 1465
Concord, NH 03302-1465.


COPY
Dr. D. R. Barthel